

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 18-279

APPROXIMATELY \$10,128,847.42 SEIZED FROM
US BANK ACCOUNT NO. -5234 HELD IN THE
NAME OF PUEBLO OF POJOAQUE GAMING FUNDS,

Defendant-in-rem.

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

Plaintiff, United States of America, brings this complaint in accordance with Rule G(2) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action to forfeit and condemn to the use and benefit of the United States of America property used in violations of 18 U.S.C. § 1955 and constituting proceeds of violations of 18 U.S.C. § 1955 that is subject to forfeiture pursuant to 18 U.S.C. § 1955(d) and 18 U.S.C. § 981(a)(1)(C).

2. Section 1955 is a general criminal statute of nationwide applicability, including Indian country, notwithstanding its incorporation of State gambling law by reference. Moreover, Title 18, United States Code, Section 1166 expressly renders State gambling law applicable to Indian country, and subjects violations thereof to federal prosecution.

DEFENDANT IN REM

3. The defendant *in rem* consists of the following:

a) Approximately \$10,128,847.42 in funds seized from US Bank Account No. -5234 held in the name of Pueblo of Pojoaque Gaming Funds (hereafter referred to as “Defendant Funds”).

4. The Defendant Funds were seized by the Federal Bureau of Investigation pursuant to a judicially-authorized seizure warrant on February 9, 2018, in the District of New Mexico.

5. The Defendant Funds are now, and during the pendency of this action will be, in the jurisdiction of this Court.

JURISDICTION AND VENUE

6. The United States District Court for the District of New Mexico has subject matter jurisdiction under 28 U.S.C. §§ 1345, 1355(a) and 1356.

7. Venue for this civil forfeiture action is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395, as acts or omissions giving rise to the forfeiture took place in this district and the property is found in this district. Upon the filing of this complaint, the Defendant Funds will be arrested by execution of a Warrant for Arrest *In Rem* in the District of New Mexico.

FACTS

8. The Pueblo of Pojoaque entered into a gaming compact with the State of New Mexico in 1997, and again in 2005. The compact entered into in 2005, which provided for revenue sharing with the State in the amount of 8% of gross gaming revenue, had an expiration date of June 30, 2015. In 2015, the State of New Mexico promulgated a new form gaming compact which, among other things, increased the amount of revenue sharing by the gaming tribes. The Pueblo of Pojoaque declined to accept the 2015 form compact, and instead sought to

negotiate a new compact with the State. The Pueblo and the State were unable to agree on a new compact. This impasse resulted in the Pueblo filing two different lawsuits against the State, both entitled Pueblo of Pojoaque v. State of New Mexico, and the State filing suit against the U.S. Department of the Interior, entitled New Mexico v. Department of the Interior, et al., in which the Pueblo of Pojoaque was an Intervenor. One of the Pueblo's suits against the State and the State's suit against Interior were still pending on the date the Pueblo's compact expired, namely, June 30, 2015.

9. On June 28, 2015, the Governor of the Pueblo of Pojoaque contacted then-United States Attorney Damon Martinez by letter, saying that the Pueblo planned to continue engaging in Class III gaming after the expiration of the compact, and asking the United States to put off bringing any enforcement action until litigation in the State's suit against Interior was completed. The United States Attorney responded by letter on June 30, 2015, advising the Governor that engaging in Class III gaming without a compact would be illegal, but agreeing to forbear from bringing an enforcement action against the Pueblo during the pendency of the Interior litigation, provided that certain conditions were met. The conditions included payment by the Pueblo of the money that would otherwise have been paid to the State of New Mexico as revenue sharing into a trust, in the care of an independent trustee, who would only be able to disburse these funds for specified purposes, including eventual distribution pursuant to a new compact or as might otherwise be determined by a court.

10. In a public statement issued on June 30, 2015, the United States Attorney explained that his purposes in agreeing to forbear from enforcement action despite the Pueblo's engagement in illegal casino-style gambling without a compact were (i) to maintain the status quo to the extent feasible, (ii) to protect the interests of all residents of the Pojoaque Valley, (iii)

to shield the other gaming tribes of New Mexico from unfair competitive disadvantage, and (iv) to safeguard funds that would have gone to the State of New Mexico as revenue sharing had the expiring compact been extended.

11. The United States Attorney's public statement went on to explain that representatives of the State had advised him that they could not accept payment of revenue sharing funds from Pojoaque Pueblo on gaming proceeds obtained after June 30 in the absence of a valid compact. The United States Attorney further explained that, in keeping with his decision to maintain the status quo during the pendency of the litigation to the extent feasible, the competitive disadvantage at which other gaming tribes would be placed if the Pueblo of Pojoaque were to conduct casino-style gaming without making revenue sharing payments would be mitigated by the Pueblo's depositing of funds that would have gone to revenue sharing into an account overseen by an independent trustee for eventual distribution pursuant to a negotiated compact or other appropriate court action, after resolution of the pending litigation.

12. Pursuant to the exchange of letters described in the paragraphs immediately above, the Pueblo of Pojoaque entered into a trust agreement with Thomas F. Gede, Esq. ("Gede") on August 24, 2015, for the creation of a trust to be called the Pueblo of Pojoaque Gaming Funds Trust, and for Gede to be the trustee. The trust agreement required Gede to provide to the Pueblo of Pojoaque and the United States Attorney for the District of New Mexico a monthly account of the trust, providing information relating to the trust property, liabilities, receipts and disbursements.

13. On or about July 1, 2015, the Pueblo began depositing funds into a trust account from gaming revenue generated on the Pueblo's lands that would otherwise have been paid to the State under the 2005 Compact. From the time of Gede's appointment as trustee, he has provided

monthly reports of the trust property. The monthly reports have included monthly bank statements that, among other information, include the name of the bank at which the trust account is maintained: US Bank, and the bank account number of the trust account: No. -5234. The bank statements also reflect that the name of the account is Pueblo of Pojoaque Gaming Funds.

14. On August 2, 2017, the New Mexico v. Department of the Interior litigation concluded when the Tenth Circuit issued its mandate, having ruled adversely to the Interior Department and the Pueblo. The Pueblo subsequently advised the United States Attorney that it would sign the State of New Mexico's 2015 form compact, and asked the government to continue forbearing from bringing enforcement action for a reasonable period of time while the new compact was reviewed by the State and by the Secretary of the Interior.

15. On August 28, 2017, Acting United States Attorney James D. Tierney wrote a letter to the Governor of the Pueblo of Pojoaque, agreeing to a further extension of time until October 30, 2017, before bringing an enforcement action. In his letter, the Acting U.S. Attorney wrote as follows:

My purpose in providing this additional window of time is to give the Pueblo and the State a reasonable opportunity to come to an agreement as to the future of Class III gaming at Pojoaque. Disposition of the funds currently held in escrow is also a relevant matter in this dispute, particularly in light of the commitment in 2015 to place funds, which would otherwise have been paid to the State of New Mexico as revenue sharing, into a trust. Please be advised that the Pueblo's Class III gaming activities may be subject to enforcement proceedings if a compact is not signed by both parties, and there is no agreement as to the disposition of the escrowed funds by October 30, 2017.

16. Representatives of the Pueblo of Pojoaque and New Mexico Governor Susana Martinez subsequently signed the 2015 form compact, which was then submitted to the Secretary

of the Interior. The new compact became effective on October 26, 2017, when such notice was published in the Federal Register.

17. Although the Pueblo and the State agreed on a new compact, they did not reach any agreement as to disposition of the funds in the Trust.

18. On November 9, 2017, the Pueblo of Pojoaque filed a Verified Petition for Declaratory Judgment on Disposition of Gaming Trust Funds in the Tribal Court of the Pueblo of Pojoaque. The petition sought a declaratory judgment that all of the funds in the Pueblo of Pojoaque Gaming Funds Trust should be disbursed to the Pueblo alone, to provide for the general welfare of the Pueblo and its members, and to promote Tribal economic development. Simultaneously with filing its Verified Petition, the Pueblo filed a Motion for Summary Judgment, alleging that no facts were in dispute, and that Gede, the Trustee, did not oppose the relief sought.

19. In its Verified Petition, the Pueblo acknowledged that the funds in the Gaming Fund Trust were proceeds of its uncompacted gaming operations, and that the funds had been deposited into the Trust account as part of an agreement with the U.S. Attorney's Office to withhold enforcement action. The Verified Petition included the following admission:

Since July 1, 2015, the Pueblo has been depositing into the Trust Account and Trustee has held and administered monthly payments from gaming revenue generated on the Pueblo's lands that otherwise would have been paid to the State under the 2001 Compact before July 1, 2015, and which would have been assessed by and paid to Pueblo under the Gaming Tax Ordinance after June 30, 2015. As of the date of this filing [that is, November 9, 2017], those deposits, minus applicable expenses and monthly fees incurred by and paid to Trustee, total \$9,915,906.86. During that period, Trustee has been paid from the Trust Funds \$92,599.32 for administration of the Trust Funds under the Trust Agreement.

Petition, at ¶ 11.

20. As of Gede's most recent monthly account of the trust, dated February 18, 2018, the balance in the trust account as of January 31, 2018, was \$10,128,847.42.

21. On November 13, 2017, Acting U.S. Attorney Tierney wrote a letter to representatives of the Pueblo and the State, reiterating the importance of determining the disposition of the funds in the Pojoaque Gaming Funds Trust. The Acting U.S. Attorney directed the Pueblo and the State to take notice that his decision to withhold enforcement action in this matter until October 30 had expired, and that, in the event of continued failure to reach an agreement as to the disposition of the funds, he would consider the possibility of taking further action in this matter, including assessing whether the Trust Fund monies constitute proceeds of illegal gambling obtained in violation of 18 U.S.C. § 1955, rendering them subject to civil forfeiture.

22. The Pueblo operated its Class III gaming facilities on a substantially continuous basis at all times material hereto, notwithstanding the Pueblo not having a valid gaming compact in effect from July 1, 2015, until October 26, 2017.

23. At all times material hereto, the Pueblo of Pojoaque operated at least two gaming facilities, namely, Buffalo Thunder and Cities of Gold. Each of these was a substantial operation that involved five or more persons who conducted gambling business. Upon information and belief, the Pueblo also operated a third gaming facility, called Jake's Place.

24. All of the Defendant Funds are proceeds of illegal gambling, as they consist of eight percent of the net win from Class III gaming that took place on the Pueblo's land between the expiration of the 2005 compact and the effective date of the 2017 compact. These funds would have been paid to the State as revenue sharing had the 2005 compact been extended.

25. The Pueblo and the State have not reached any agreement between themselves as to disposition of the funds in the Pojoaque Gaming Funds Trust.

FIRST CLAIM FOR RELIEF

26. The United States incorporates by reference the allegations in paragraphs 1 through 25 as though fully set forth.

27. Title 18, United States Code, Section 1955(d) subjects to forfeiture “[a]ny property, including money, used in violation of the provisions of [18 U.S.C. § 1955].”

28. The Defendant Funds were used in violation of the provisions of 18 U.S.C. § 1955 and are thus subject to forfeiture to the United States pursuant to 18 U.S.C. § 1955(d).

SECOND CLAIM FOR RELIEF

29. The United States incorporates by reference the allegations in paragraphs 1 through 25 as though fully set forth.

30. Title 18, United States Code, Section 981 (a)(1)(C) subjects to forfeiture “[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to...any offense constituting “specified unlawful activity” (as defined by 18 U.S.C. § 1956(c)(7)) or a conspiracy to commit such offense.”

31. An offense in violation of 18 U.S.C. § 1955 constitutes “specified unlawful activity” as defined by 18 U.S.C. § 1956(c)(7).

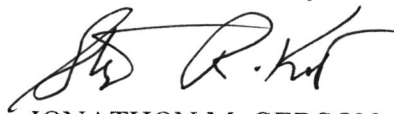
32. The Defendant Funds constitute or are derived from proceeds traceable to offenses(s) in violation of 18 U.S.C. § 1955 and are thus subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C).

WHEREFORE: Plaintiff seeks arrest of Defendant Funds and forfeiture of same to Plaintiff, determination of the validity and priority of claims of any Claimants and any Unknown

Claimants to the Defendant Funds, costs and expenses of seizure and of this proceeding, and other proper relief.

Respectfully submitted,

JOHN C. ANDERSON
United States Attorney

A handwritten signature in black ink, appearing to read "J. M. Gerson", written over the printed name of Jonathon M. Gerson.

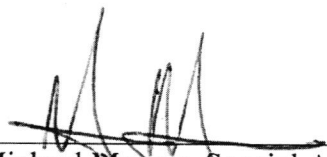
JONATHON M. GERSON
STEPHEN R. KOTZ
Assistant U.S. Attorneys
P.O. Box 607
Albuquerque, NM 87103
(505) 346-7274

28 U.S.C. § 1746 DECLARATION

I am a Special Agent with the Federal Bureau of Investigation who has read the contents of the Complaint for Forfeiture *In Rem* to which this Declaration is attached; and the statements contained in the complaint are true to the best of my knowledge and belief.

I declare under penalty of perjury and the laws of the United States of America that this Declaration is true and correct, except as to matters stated on information and belief, and as to those matters I believe them to be true.

Dated: 03/21/2018



Michael Marycz, Special Agent
Federal Bureau of Investigation

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

APPROXIMATELY \$10,128,847.42, ET.AL.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION		
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

IV. NATURE OF SUIT (Place an "X" in One Box Only)**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 U.S.C. § 1955(d) and 18 U.S.C. § 981(a)(1)(C).

Brief description of cause:

VII. REQUESTED IN

CHECK IF THIS IS A CLASS ACTION

DEMAND \$

CHECK YES only if demanded in complaint:

COMPLAINT:

UNDER RULE 23, F.R.Cv.P.

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

3/23/2018

